No. 14-86

In the Supreme Court of the United States

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Petitioner

v.

ABERCROMBIE & FITCH STORES, INC.

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

BRIEF OF *AMICI CURIAE* FIFTEEN RELIGIOUS AND CIVIL RIGHTS ORGANIZATIONS IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether an employer can be liable under the religious-accommodation provision of Title VII for refusing to hire an applicant or discharging an employee based on a "religious observance and practice" only if the employer has actual knowledge that a religious accommodation was required and the employer's actual knowledge resulted from direct, explicit notice from the applicant or employee.

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INTRODUCTION AND INTERESTS OF *AMICI*[1]

When Congress added a religious-accommodation requirement to Title VII in 1972, it recognized that, as a practical matter, religious freedom in the workplace is as important to most believers as freedom from restrictions on religious practice imposed by the government. After all, nearly everyone needs a job, and workplace rules can interfere with religious practice as effectively as governmental restrictions. Accordingly, Congress required that, when an employer can do so "without undue hardship on the conduct of [its] business," the employer must "reasonably accommodate ... *all* aspects" of an "employee's or prospective employee's religious observance or practice." 42 U.S.C. § 2000e(j) (emphasis added).

According to the legislative history, Congress's purpose in adopting this provision was to ensure that, absent a truly undue burden on the employer, no religious believer should be disadvantaged in his or her employment prospects—compared with other employees or applicants—because of adherence to religious beliefs. Or, as this Court has put it, the provision is designed to ensure "equality of employment opportunities" regardless of religious belief or practice. *Pullman-Standard* v. *Swint*, 456 U.S. 273, 276 (1982).

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[1] No one (including a party or its counsel) other than the *amici curiae*, their members and counsel authored this brief in whole or in part, or made a monetary contribution intended to fund its preparation or submission. All parties have consented to the filing of this brief in communications on file with the Clerk.

Unfortunately, two of the Tenth Circuit's holdings—both of which are fairly included in the question presented—would eviscerate this critical protection for religious freedom. First, as the EEOC explains and the majority conceded, the panel's decision invents a new requirement that to be in violation of the accommodation provision the employer must have "actual knowledge," not just notice, of a need for a religious accommodation, *and* that this knowledge "counts" only if it comes directly from the employee or applicant. Second, the majority erected a new, nonstatutory requirement that the accommodation must be "required" in the sense that the "religious observance or practice" is "inflexible" or mandatory, not just recommended or encouraged by the employee's religion.

Amici curiae, religious and civil-rights organizations representing tens of millions of Christians, Jews, Muslims, Sikhs and other faith groups throughout the United States, are deeply concerned about the impact of these two holdings on the ability of religiously observant job applicants to obtain and keep employment and, equally important, to continue following the tenets of their faith. From personal experience working with their members and clients, *amici* know that the disparity between employer and employee is nowhere greater than during the hiring process. Frequently, an applicant will be unaware of a work-religion conflict simply because of her inferior knowledge of the employer's work requirements. And even if the applicant is aware of a potential conflict, hiring processes—increasingly initiated online—are often structured in a way that precludes the employee from even raising the issue.

The Tenth Circuit's heightened *scienter* requirements thus create an even greater incentive for employers to act as "ostriches"—remaining willfully ignorant of the religious needs of employees, applicants and their families. Those requirements are also inconsistent with Congress's evident purposes to ensure that Title VII protects religiously motivated conduct as well as belief, thereby ensuring an "equality of employment opportunities" that protects people of faith from having to choose between their faith and their employment. *Pullman-Standard*, *supra*, 456 U.S. at 276. The Tenth Circuit's heightened *scienter* requirements would allow employers routinely to force employees and applicants to choose between those two imperatives, which would in turn undermine the ability of many believers to provide for themselves and their families.

Similarly, by allowing an employer to deny an accommodation based upon the perceived "flexibility" of a religious conviction, the Tenth Circuit's approach turns Title VII on its head. It contravenes Congress's express choice that, except where unduly burdensome, employers and potential employers must accommodate "*all* aspects" of an employee or applicant's "religious observance or practice, as well as belief," 42 U.S.C. § 2000e(j) (emphasis added), not just some of them. In that respect too, the Tenth Circuit's approach undermines Congress's purpose of ensuring "equality of employment opportunities" regardless of religious belief or practice.

STATEMENT

This case involves a young Muslim woman, Samantha Elauf, who was denied a job at an Abercrombie & Fitch store. The denial was based on an interview with a store official who, seeing she wore a headscarf, thought Ms. Elauf would likely require an accommodation of the store's "Look Policy," which prohibits headgear.

Over a vigorous dissent by Judge Ebel, the Tenth Circuit majority held that a job applicant who is rejected based on the employer's perception of a work-religion conflict cannot make a *prima facie* case under Title VII unless, during the hiring process, a specific religious practice and resulting work-religion conflict were expressly flagged *by the potential employee*—even if the employer was otherwise on notice of the conflict. See *E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, 731 F.3d 1106, 1122-23 (10th Cir. 2013); Pet. App. 28a-30a. Equally important, in reaching that conclusion, the Tenth Circuit held that an employer is "required" to accommodate a religious practice only if the potential employee views it as "inflexible"—that is, mandated rather than merely encouraged by the employee's religious beliefs. *Id.* at 23a-24a, 39a, 41a, 52a, 54a. Absent reversal by this Court, both holdings will govern the proceedings on remand in the district court in this case, and in future cases in the Tenth Circuit.

SUMMARY

I. The protections of Title VII are very important, not only to the religiously observant, but to the faiths to which they belong. As shown by the history of the 1972 amendment, Congressional action was prompted by court decisions that read Title VII more narrowly than the First Amendment, and thus provided no private workplace protection for religiously motivated conduct. As a result, Congress sought to provide protection in private employment at least equal to what the Constitution provides in the public sphere, thus ensuring what this Court has called an "equality of employment opportunities" for people of faith. *Pullman-Standard, supra,* 456 U.S. at 276.

The need for such accommodation is particularly acute in two areas. First, Sabbath and holy day observances often conflict with mandatory work schedules. And online application systems make it practically impossible for applicants to inform potential employers *why* they cannot work on certain days, resulting in automatic rejection. Second, religious dress and grooming requirements often conflict with the public image employers seek to portray. Moreover, such outward displays of one's faith are usually evident during job interviews, and compromise can often be found—as long as employers have an incentive to undertake the necessary dialogue.

II. The Tenth Circuit's heightened knowledge requirements not only destroy that incentive; they are also divorced from the text, history and purpose of the 1972 accommodation provision. By requiring that the employer have subjective knowledge of the need for religious accommodation *and* that such knowledge come via communication from the seeker of the ac-

commodation, the Tenth Circuit has simply rewritten that provision. Nothing in its text suggests such a draconian requirement. And the provision's history shows that Congress sought to enable the religiously observant—particularly religious minorities—to stand on equal ground with their non-observant fellow citizens. *Id.* The Tenth Circuit's heightened *scienter* requirements would undermine that objective.

Those requirements also lead to absurd results, particularly for job applicants. For example, merely by observing an applicant's dress, a potential employer may learn that a work conflict is likely. But under the Tenth Circuit's approach, the employer is under no duty to say anything unless the applicant—ignorant of the job's duties and thus the conflict—says something about it. Thus, instead of spurring a dialogue between applicant or employee and employer, the Tenth Circuit's *scienter* requirements will actually chill such communication.

III. The Tenth Circuit's holding that "inflexible" beliefs are more deserving of accommodation than "flexible" ones is similarly erroneous. It injects courts into theological controversies even as it creates a preference for faiths placing relatively greater emphasis on clear-cut commands. An "inflexibility" requirement likewise contravenes the plain text of Title VII, which explicitly requires reasonable accommodation of "all aspects of religious observance and practice." 42 U.S.C. 2000e(j). And like the Tenth Circuit's *scienter* holdings, that requirement also leaves religiously observant employees and applicants at a substantial disadvantage compared to the non-observant, thereby contravening the "equality of employment opportunity" that Title VII's accommodation provision was designed to provide.

ARGUMENT

I. Title VII's accommodation provision is highly important to individuals and families of all faiths, and to the religious bodies to which they belong.

Before explaining why the Tenth Circuit's holdings were wrong, it is important to understand why Title VII's religious-accommodation provision is so important to so many people of faith. That provision was adopted by Congress in 1972 in response to judicial decisions that had adopted a narrow reading of the 1964 Act's general prohibition of discrimination based on religion. See 118 Cong. Rec. 705-31 (1972); see also Karen Engle, *The Persistence of Neutrality: The Failure of the Religious Accommodation Provision to Redeem Title VII*, 76 Tex. L. Rev. 317, 362-63, 368 (1997). In essence, those decisions held that in the employment setting, Title VII's original prohibition on religion-based discrimination protected only religious belief, not religiously motivated conduct. *E.g., Riley v. Bendix Corp.*, 330 F. Supp. 583 (1971); *Dewey v. Reynolds Metal Co.*, 429 F.2d 324 (6th Cir. 1970) *aff'd*, 402 U.S. 689 (1971). Those decisions thus suggested that Title VII's prohibition of religious discrimination in the private workplace was narrower than the protection provided in the context of governmental regulation by the First Amendment, which has long been held to protect not just religious belief, but religiously motivated conduct. *E.g., Wisconsin v. Yoder*, 406 U.S. 205 (1972). According to the chief Senate sponsor of the 1972 amendment, Randolph Jennings, the new accommodation provision was intended to make clear that Title VII's prohibition on religious discrimination "protect[s] the same rights in private employment as the Constitution protects in Federal, State, or local governments." 118 Cong. Rec.

at 705. Accordingly, with the new accommodation provision, the Title VII prohibition on religious discrimination would clearly protect not only religious belief, but also religiously motivated conduct.

Protection of religiously motivated conduct in the employment setting is highly important to believers of virtually all stripes, and to the religious bodies to which they belong. Indeed, in proposing the accommodation provision at issue here, Senator Jennings noted that employers' failure to accommodate religiously motivated conduct had led to "a dwindling of the membership of some ... religious organizations." *Id.*

Furthermore, religion is unlike the other protected characteristics or traits in Title VII. The others (race, color, sex, etc.) merely require equal treatment in order to have equal opportunity. But religion requires special treatment (*vis-à-vis* other employees or applicants) in order to have equal opportunity.

As we now show, the need for such accommodations is particularly important for two types of religious beliefs: those relating to Sabbath and other holy day observances, and those (like the belief at issue in this case) relating to religious dress and grooming standards.

A. Sabbath and other holy day observances frequently conflict with employers' work schedules.

Even after the adoption of Title VII's accommodation provision, there are numerous conflicts between job duties and religious convictions regarding Sabbaths and holy days. See, *e.g., Ansonia Bd. Of Educ. v. Philbrook*, 479 U.S. 60 (1986); *Trans World Airlines, Inc.* v. *Hardison*, 432 U.S. 63 (1977); *Balint* v.

Carson City, 180 F.3d 1047 (9th Cir. 1999); *Brown* v. *General Motors Corp*, 601 F.2d 956 (8th Cir. 1979). For example, Seventh-day Adventists, Seventh Day Baptists and observant Jews all observe Sabbath from sundown on Friday to sundown on Saturday. Other Christian groups hold similar beliefs on Sunday observance. Many Jews, Muslims, Christians and members of other faiths also observe holy days that sometimes occur during the business week.

While religious limitations on an employee's work schedule may not be as visible as the headscarf in this case, recent trends in employment applications indicate that this is a serious, although largely hidden, problem. Online recruiting and employment applications have exploded over the past decade.[2] And automated screening of online applications has become ever more prevalent.[3] But automated application processes create a serious problem for applicants whose religious practices create scheduling limitations by making it more difficult for such applicants to bring to an employer's attention the religious reasons for their scheduling limitations.

Unfortunately, the Tenth Circuit's reasoning gives the employer a perverse incentive to *deny* to religiously observant applicants any opportunity to dis-

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[2] See Online Job Recruitment: Trends, Benefits, Outcomes and Implications, available at www.hr.com/en/communities/staffing_and_recruitment/online-job-recruitment-trends-benefits-outcomes-an_f70ogs0y.html (Sept. 25, 2007) (last viewed Aug. 15, 2014).

[3] See Recruiting Technology and Recruiting Software Trends 2013, available at www.recruiter.com/recruiting-technology-and-recruitingsoftware-trends.pdf (last viewed Aug. 15, 2014).

cuss religion-based limitations on their appearance or scheduling. Under that reasoning, the employer's ignorance automatically defeats a *prima facie* case, and thus effectively eliminates Title VII's accommodation protections for those applicants. Under the Tenth Circuit's position, then, observers of Sabbaths and other holy days will find themselves effectively excluded from a large and growing sector of the workforce that is hired through online applications.[4]

B. Religiously motivated appearance frequently conflicts with employers' "look" rules.

Another issue that often arises in the workplace concerns religious dress and appearance. Many Muslim women, like Ms. Elauf, believe that the Quran requires or at least encourages them to cover their heads in public. See, *e.g.*, *Kaukab* v. *Harris*, 2003 WL 21823752 (N.D. Ill. Aug. 6, 2003). Sikhs are likewise

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[4] *Amici* have received numerous troubling reports of online application systems that have precisely this effect. In those systems, once an applicant has completely filled out one of a series of pages, that page is submitted and the next page appears. During this process, a page generally inquires about the applicant's scheduling availability. If the applicant indicates any limitation, the response is not accepted and the applicant is unable to proceed further with the application—and therefore cannot be hired. Thus, a Sabbath-observer who does not indicate availability for work during her Sabbath is unable even to complete the application and is thus excluded from employment, even if a scheduling accommodation could be accomplished with little to no effort or cost to the employer.

The Tenth Circuit's decision effectively insulates such systems from any legal challenge under Title VII. And that means that many religiously observant job seekers will never even get to the interview stage of the hiring process.

required to wear turbans and maintain uncut hair, including beards. See, *e.g.*, *Bhatia* v. *Chevron U.S.A., Inc.*, 734 F.2d 1382 (9th Cir. 1984); *EEOC* v. *United Galaxy, Inc.*, Civ. No. 10-4987 (ES), 2013 WL 3223626 (D.N.J. June 25, 2013). And many Jews wear head coverings such as hats or yarmulkes. See, *e.g.*, *Goldman* v. *Weinberger*, 475 U.S. 503 (1986).

Appearance-related religious practices are also often found in various Christian denominations. Many Pentecostal women do not cut their hair and wear head coverings. And Christians of all denominations wear various forms of religious jewelry such as crosses or crucifixes, religious medals and evangelistic messages. See, *e.g.*, *Rivera* v. *Choice Courier Systems, Inc.*, 2004 WL 1444852 (S.D.N.Y. Jun. 25, 2004); *Hickey* v. *S.U.N.Y. at Stony Brook Hospital*, 2012 WL 3064170 (E.D.N.Y. Jul. 27, 2012).

Some of these religious practices are, by their nature, apparent during an interview. Sometimes, accommodation is possible simply by modifying apparel in a manner that eliminates the conflict. However, such accommodation cannot be achieved unless the need for an accommodation is first identified and discussed. And here again, the Tenth Circuit's decision discourages such discussion because, under that decision, an employer can face liability based only on what the employee or applicant *herself* directly communicates to the employer, not on knowledge the employer might have received from other sources, including the employer's own observations.

In short, the majority's analysis is likely to have profound and far-reaching impacts on a wide variety of religiously observant employees and applicants.

And it will too often force them to choose, unnecessarily, between a job and their faith.

* * * * *

The frequency with which both types of work-religion conflicts arise is undoubtedly influenced by the increasing diversity of religious beliefs and practices.[5] Moreover, while work-religion conflicts are common, they can often be accommodated without undue hardship as long as both employees and employers have an adequate incentive to undertake the necessary dialogue. And in practical terms, that is the issue at the heart of this case—how to ensure that employers as well as employees have adequate incentives to initiate and participate in such problem-solving dialogue.

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[5] See Pew Forum on Religion and Public Life, U.S. Religious Landscape Survey (2008) (available at http://religions. pewforum.org/pdf/report-religious-landscape-study-full.pdf) (last viewed Aug. 15, 2014) (finding that "the United States is on the verge of becoming a minority Protestant country ... Immigrants are also disproportionately represented among several world religions in the U.S., including Islam, Hinduism and Buddhism"); Gallup, Religion (2013) (available at http://www.gallup.com/poll/1690/religion.aspx) (last viewed Aug. 15, 2014) (finding just 41% of respondents to be Protestant).

II. The Tenth Circuit's heightened "knowledge" requirements lack any mooring in Title VII's text or history, and undermine Congress's objective of ensuring "equality of employment opportunities" for believers who follow the tenets of their faith.

As previously explained, the Tenth Circuit adopted two heightened *scienter* requirements for employer liability under Title VII's accommodation provision: the requirement that the employer have "actual, particularized knowledge" of the work-religion conflict, and the requirement that the employer receive that knowledge from the employee herself. As the EEOC persuasively demonstrates (at 28-34), nothing in this Court's decisions or in the EEOC Guidelines supports either of those requirements. In addition, as we now show, those *scienter* requirements find no support in the text, history or purposes of the accommodation provision—all of which compel rejection of both requirements.

A. Those requirements contravene the accommodation provision's history and broad language.

1. The history of the accommodation provision is particularly instructive. As originally enacted, the Civil Rights Act of 1964 placed religion alongside color, national origin, sex and race as prohibited grounds for employment discrimination. 42 U.S.C. § 2000e-2(a)(1). But soon thereafter, it became apparent that this elevation of religion to a place equal to race had received short shrift by most courts.

Two decisions in particular caught Congress's eye. See Engle, *supra* at 362-63, 368; *see also* 118 Cong. Rec. at 706-31. In *Dewey v. Reynolds Metal Co.*, Mr. Dewey, a member of the Faith Reformed Church, had refused for religious reasons to work on Sundays.

429 F.2d 324, 329 (6th Cir. 1970), aff'd by an equally divided court, 402 U.S. 689 (1971). The Sixth Circuit held that his subsequent firing did not violate Title VII, and this Court affirmed by an equally divided court. *Id.* at 328-29. Shortly thereafter, in *Riley v. Bendix Corp.*, 330 F. Supp. 583 (1971), a district court rejected a similar Title VII claim by a Seventh-day Adventist, Mr. Riley, who had refused to work from sun-down on Friday until sun-down on Saturday. *Id.* at 584. The court reasoned that Riley had been "discharged solely because of his refusal to work the hours assigned to him and not as a result of any religious discrimination." *Id.* at 584, 591. The court thus ignored the fact that his "refusal to work the hours assigned to him" was the result of his religious belief.

Responding to these and other decisions, Senator Jennings Randolph proposed an amendment to Title VII. Engle, *supra*, at 368. Randolph, a Seventh-Day Baptist, expressed concern for religious minorities who had Sabbaths on days other than Sunday—specifically Orthodox Jews, Seventh-day Adventists, and Seventh-Day Baptists. 118 Cong. Rec. at 705. But he also sought to protect anyone seeking to honor a religious Sabbath, "whether the day would fall on Friday, or Saturday, or Sunday." *Id.* He noted that employers had either refused to hire, or fired, those with such religious commitments, which he said had led to "pressures" on such religiously inclined individuals, and thence to "a dwindling of the membership of some of the religious organizations." *Id.*

Senator Randolph's focus also extended beyond religious holidays. Noting that life in the United States has become "more pluralistic and more industrialized through the years," he declared that the Civil Rights Act was broadly "intended to protect the same rights

in private employment as the Constitution protects in Federal, State, or local governments." *Id.* He thus foresaw that his proposed amendment would protect religious minorities' "religious freedom, and hopefully their opportunity to earn a livelihood within the American system." *Id.* at 706.

This comment was later echoed by Representative John Dent, the chair of the subcommittee that produced the House's version of the 1972 amendment to Title VII. Dent noted on the House floor that: "Most people just want to work. ... We are trying to see that all of us, no matter of what race, sex, or religious or ethnic background, will have equal opportunity in employment." 118 Cong. Rec. at 7569.

To ensure that the Act achieved those objectives, Randolph proposed an amendment to Title VII, providing that "The term 'religion' includes *all* aspects of religious observance and practice, as well as belief." *Id.* at 705. Contrary to *Dewey* and *Riley,* this provision made clear that a private employer's refusal to accommodate an employee's religiously motivated practice—such as foregoing work on a Sabbath—constituted discrimination based on religion.

Randolph's proposal also included an exception for situations in which "an *employer* demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." *Id.* (emphasis added). Where an employer could carry its burden of "demonstrat[ing]" a hardship, he would not be liable for religious discrimination. But otherwise, an employer would be required to accommodate religiously motivated practices as well as beliefs.

After a brief floor discussion, the amendment passed unanimously, without amendment. *Id.* at 731. In light of the provision's history and unanimous passage, it is beyond dispute that Congress's purposes in passing the provision were as Senator Randolph and Representative Dent had stated them: to make clear that Title VII (i) protects religiously motivated conduct as well as belief, and (ii) enables people of faith to "earn a livelihood" through private employment on the same terms as other citizens, without having to choose between their jobs and their faith. Or, as this Court has put it, the accommodation provision is designed "to assure equality of employment opportunities" for believers who choose to adhere to the tenets of their faith *Pullman-Standard,* 456 U.S. at 276.

The Tenth Circuit's heightened "actual knowledge" requirements would impair both of these purposes. As this case illustrates, requiring employees—and especially applicants—to personally identify the pertinent work-religion conflict and bring it to the employer's attention would mean that a wide swath of religiously motivated conduct would go unprotected. The majority's approach would also place people of faith at a substantial disadvantage in their efforts to "earn a livelihood through the American system." It would thus effectively destroy the "equality of employment opportunities" that the accommodation provision was designed to create.

2. The text of the accommodation provision even more clearly refutes the majority's heightened *scienter* requirements. Although the EEOC would later adopt a sensible, minimal notice requirement, the text of Senator Randolph's proposal, which Congress adopted without change, contained no advance *scien-*

ter requirement. As enacted, the full provision provides:

> The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

42 U.S.C. § 2000e(j). To be sure, the provision allows the employer to escape liability by "demonstrat[ing] that he is unable to reasonably accommodate" the "religious observance or practice without undue hardship." It thereby implicitly suggests that the employer must learn at some point that the employee has a "religious" observance or practice that needs accommodating. But nothing in the provision says an employer must be so informed *before* a claim under the statute is asserted. The statutory text is silent on that point, and thus doesn't differentiate between an employer knowingly and directly discriminating based on religion, or doing so indirectly based on an employee's religious practice—for example, refusing to hire applicants because they indicate on a form that they cannot work on Saturdays, when the reason they cannot do so is their religious beliefs.[6]

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[6] So too is § 2000e-2(a)(1), which makes it "an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's...religion..." Although the phrase "because of such individual's religion" might be interpreted in isolation to impose a re-

We recognize of course that the EEOC has interpreted Title VII to require that the employer be "on notice" of the work-religion conflict before a duty to accommodate arises. EEOC, *Compliance Manual, Section 12: Religious Discrimination* § 12-IV Overview (2008). And we do not ask the Court to overturn that interpretation. But given that the statutory text does not itself impose a pre-suit notice requirement, or any other *scienter* requirement, it was highly inappropriate for the Tenth Circuit to require, not mere notice, but "actual, particularized knowledge"—provided by the employee herself, no less—as a prerequisite to an employee's ability to maintain a claim for failure to accommodate. Absent a constitutional requirement, the Tenth Circuit has no authority to engraft onto a statute a *scienter* requirement that Congress has not chosen to include and that the EEOC has chosen not to adopt. See, *e.g., Missouri v. Jenkins,* 515 U.S. 70, 133 (1995) (Thomas, J. concurring) ("Federal judges cannot make...fundamentally political decisions...they detract from the independence and dignity of the federal courts ..."); *Federalist 78* ("The courts must declare the sense of the law; and if they should be disposed to exercise will instead of judgment, the consequence would equally be the substitution of their pleasure to that of the legislative

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quirement of advance subjective knowledge, that interpretation is less compelling in light of the language of the religious accommodation provision, which defines "religion" to include religiously motivated conduct as well as belief. Thus, even if the employer doesn't realize that the conduct to which he objects is religiously motivated, under the plain text, discrimination based on that conduct will still constitute discrimination based on religion, and is subject to the statute's accommodation requirement.

body"). To do so violates not only the ordinary plain-meaning rule, but also the principle that civil-rights statutes should be broadly construed to effectuate their remedial purposes. See, *e.g.*, *Northeast Marine Terminal Co., Inc. v. Caputo*, 432 U.S. 249, 268 (1977) (declaring that "[t]he language of the 1972 Amendments [of another statute] is broad and suggests that we should take an expansive view of the extended coverage. ...The Act 'must be liberally construed in conformance with its purpose, and in a way which avoids harsh and incongruous results") (quoting *Voris v. Eikel*, 346 U.S. 328, 333 (1953)); *Burnett v. Grattan*, 468 U.S. 42, 54 (1984) (noting the "broadly remedial purposes of the Civil Rights Acts"); Pet. Brief at 24-25. That error must be reversed.

3. The Tenth Circuit's heightened *scienter* requirements conflict with the statutory text in another respect. As previously discussed, the text places on the *employer* the burden to "demonstrate[] that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business." 42 U.S.C. § 2000e(j). By its terms, that language places on the employer the burden of establishing every element of that defense, including (a) what the relevant "religious observance or practice" is and (b) what would be necessary to "accommodate" that observance or practice. But by requiring that the employee or applicant provide sufficient information to give the employer "actual, particularized knowledge" of the work-religion conflict, the Tenth Circuit's rule effectively and improperly places on the employee or applicant the burden of proving both of these things.

The Tenth Circuit may well have believed it fair to place that burden on an employee rather than the employer, given that the employee will often be in a better position to know why a particular work requirement conflicts with her religious beliefs. But, as discussed in more depth below, that is generally not true of job applicants, who typically will not learn about the pertinent work requirement unless and until the *employer* tells them. In any event, the Tenth Circuit's burden-shifting scheme is not the approach Congress adopted. And the Tenth Circuit has no authority to amend the statutory scheme—especially in light of the principle, noted above, that civil rights statutes are to be broadly construed in favor of accomplishing their remedial objectives.

In short, there simply is no statutory justification for imposing on the employee the burden of proving in every case that she *personally* gave the employer "particularized actual knowledge" of the relevant work-religion conflict. That error must likewise be reversed.

B. Those requirements lead to absurd results, especially in the application context.

Beyond their inconsistency with the text and history of the Title VII accommodation provision, the Tenth Circuit's heightened *scienter* requirements would lead to absurd results, especially in the context of employment applications.

1. This is particularly true of the Tenth Circuit's holding that the only acceptable source of information concerning a work-religion conflict is the employee or applicant, regardless of all other information of which the employer is aware. See Pet. App. 29a-31a, 33a, 71a. Under that view, for example, Title VII is simp-

ly inapplicable unless Ms. Elauf *personally* uttered certain (unspecified) statements establishing a work-religion conflict. Thus, even if Ms. Elauf had been accompanied to the job interview by her imam, who explained the Quranic requirement of the headscarf, the employer would still have no obligation under Title VII simply because that information did not come directly from Ms. Elauf. That is absurd.[7]

That requirement and the Tenth Circuit's "particularized, *actual* knowledge" requirement are especially unfair in the employment application context, in which an employer's knowledge of its own business and resulting job requirements is vastly superior to that of the applicant. How is an applicant supposed to identify every "particularized" work-religion conflict that might arise during an employment relationship that has not even yet begun?

2. As a result of these misinterpretations of Title VII, the Tenth Circuit's holding effectively permits an employer to ignore a work-religion conflict of which it is actually aware, from a source other than the employee or applicant. That is misguided for at least three reasons.

First, it ignores the obvious information asymmetry between an employer and a job applicant. Surely, for example, an employer who sees an appli-

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[7] While formulations of the *prima facie* case frequently refer to notice by the employee, this is merely because that is the most common fact pattern. In the typical case, the work-religion conflict will be exposed as a matter of course by an employee who objects to a conflicting work requirement once she learns of it. The same cannot be said of potential conflicts with work rules that are known only to an employer during the hiring process.

cant wearing religious apparel will generally be in a better position to determine whether it is likely to create a religion-work conflict in the employer's own workplace. And the employer's knowledge of that potential—gleaned from the interview itself—is certainly relevant in determining whether a disappointed applicant has established a *prima facie* case of religious discrimination.

The same is true of scheduling issues: If a potential employer learns during a job interview that an applicant holds beliefs that may create a scheduling issue, that knowledge too should be relevant in determining whether an employer that refused to hire the applicant did so based on the applicant's religious practice. Yet the Tenth Circuit's holding makes it irrelevant, even for purposes of summary judgment.

The Tenth Circuit's requirement that the employee or applicant identify and articulate a specific, "particularized" conflict heightens the unfairness. It is often said that the majority of communication is nonverbal.[8] And a hyper-technical rule that requires a *verbal* communication of something that has already been effectively conveyed non-verbally is nonsensical and redundant. If the point of the accommodation process is to give the employer a chance to work out a satisfactory accommodation—as it is—that purpose will be served once the employer is aware of the conflict, even if the prospective employee is unable to articulate the conflict in a "particularized" fashion. See, *e.g.*, *Hellinger*, 67 F. Supp.2d at 1363-64.

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[8] See Albert Mehrabian, Silent Messages: Implicit Communication of Emotions and Attitudes (2d ed. 1981).

To be sure, it is fair to expect an employee to inform the employer once the employee learns that a conflict exists. But where the employee or applicant never learns of the conflict—or even, as in this case, is affirmatively led to believe (by a company employee) that no conflict exists, *see* Pet. Brief at 5—there is not only no reason for the employee to provide such information, it is impossible. In that circumstance, as in this case, the employer may be the only party in a position to know whether a conflict exists between a work rule and a potential employee's religious belief or practice. And if that is true, it is patently unfair to place on the applicant the burden of discerning and articulating the conflict.

Second, the Tenth Circuit's *scienter* requirements frustrate one of the main practical purposes of the accommodation requirement, which is to spur a dialogue between employer and employee on how best to meet the employer's objectives while satisfying the employee's religious desires. As this Court has put it, "bilateral cooperation is appropriate in the search for an acceptable reconciliation of the needs of the employee's religion and ... the employer's business." *Ansonia Bd. of Educ.* v. *Philbrook*, 479 U.S. 60, 69 (1986). Or, as the Eighth Circuit has suggested, the purpose of Title VII's accommodation process is to allow the "employer [to] have ... the chance to explain the [relevant] policy in relation to [the employee's] religious needs, and perhaps work out an arrangement satisfactory to both parties." *Johnson* v. *Angelica Uniform Group*, 762 F.2d 671, 673 (8th Cir. 1985).

That is what *should* have happened in this case. Once Abercrombie's managers became concerned about Ms. Elauf's headscarf, they should have engaged her in discussion about their concern. Without

inquiring into her religious beliefs, they could have told her (a) that wearing a headscarf would conflict with the store's "look" policy, but (b) that if she were wearing the headscarf for religious reasons, there was a possibility the practice could be accommodated, if it could be done without an undue burden to the employer. If Ms. Elauf then chose to reveal that she was in fact wearing the headscarf for religious reasons, she and the managers could have discussed the issue. And in all likelihood, they could then have worked out an accommodation that would have met both their legitimate needs.

Yet under the standard adopted by the Tenth Circuit, employers like Abercrombie have a powerful incentive to *avoid* any meaningful interaction with applicants and to ignore recognized conflicts rather than communicate about possible solutions. Such an approach defies common sense. As the Ninth Circuit recognized when addressing this same issue in *Heller* v. *EBB Auto Co.*:

> A sensible approach would require only enough information about an employee's religious needs to permit the *employer* to understand the existence of a conflict between the employee's religious practices and the employer's job requirements.

8 F.3d 1433, 1439 (9th Cir. 1993) (emphasis added); accord *Brown* v. *Polk County*, 61 F.3d 650, 654 (8th Cir. 1995); *Hellinger* v. *Eckerd Corp.*, 67 F. Supp.2d 1359, 1363-64 (S.D. Fla. 1999); *Hickey*, 2012 WL 3064170 at *7. With such information in hand—information that Abercrombie had in this case—the employer and employee can then work out an accommodation that meets the needs of both. But such interactions obviously will not occur under a legal re-

gime—like that articulated by the Tenth Circuit—that gives the potential employer a powerful incentive *not* to undertake that discussion during the hiring process. See also Pet. Brief at 26-27.

Third, the majority's approach threatens to cripple Title VII's protection against religious discrimination for a wide swath of job applications from the religiously observant. Because an employer is generally more aware of its own job requirements than a job applicant, the employer will usually be in a better position to determine whether a particular religious belief may create a religion-work conflict. But the Tenth Circuit's holding—that the employer's *own* independent knowledge or notice of an applicant's religious belief is irrelevant to the employee's *prima facie* case—would effectively deny protection to potential employees in all or virtually all such cases.

Indeed, by allowing an employer to act based solely upon a prospective employee's apparent religious conviction—in this case Ms. Elauf's apparent belief in the religious desirability of wearing a headscarf—without attempting to find a reasonable accommodation, the Tenth Circuit's approach turns Title VII's religious accommodation protection on its head. As explained previously, this historic legislation was enacted to provide greater balance in the otherwise asymmetric relationship between employers and employees or applicants. Yet the Tenth Circuit's heightened *scienter* requirements shifts that balance away from the religiously observant employee, making it easier for the employee to be disadvantaged based on her compliance with her religious beliefs. And this too seriously undermines Congress's objective of ensuring "equality of employment opportunities" re-

gardless of religious belief or practice. *Pullman-Standard, supra,* 456 U.S. at 276.

For all these reasons, the Tenth Circuit's imposition of non-statutory *scienter* requirements beyond the EEOC's notice standard must be reversed.

Moreover, instead of the Tenth Circuit's approach, we respectfully suggest that "inquiry notice" should be deemed sufficient to satisfy any *scienter* requirement arising under the Title VII accommodation provision. In other words, once an employer has been provided notice, from whatever source, that a potential conflict *may* exist between a work requirement and an employee's or applicant's religious practice, the employer is required to inquire further to confirm the conflict's existence and scope. An inquiry notice standard is consistent with the EEOC's own approach. EEOC, *Compliance Manual, Section 12: Religious Discrimination* § 12-IV Overview (2008). It is also consistent with the bulk of the lower court decisions, including the district court's decision in this case. *See EEOC v. Abercrombie & Fitch Stores, Inc.*, 798 F. Supp. 2d 1272, 1285-86 (N.D. Okla. 2011); Pet. App. at 115a-118a; *accord United Galaxy,* 2013 WL 3223626 at 11-12 (denying the defendant summary judgment after finding that the mere fact that the plaintiff wore "a turban and an untampered beard...should have put Defendant on notice to inquire further"). It will encourage the bilateral discussions called for in *Heller.* And it will substantially reduce the likelihood that employees and applicants will be placed at a disadvantage because they choose to adhere to their religious beliefs—thereby vindicating Congress's original purpose in enacting the accommodation provision.

III. The Tenth Circuit's "inflexibility" holding is equally wrong, and likewise undermines Congress's purpose of ensuring "equality of employment opportunities" regardless of religious belief or practice.

The majority's "inflexibility" requirement also substantially weakens Title VII's accommodation regime—both in the job application context and more generally. Indeed, that requirement would discriminate in favor of adherents to religions that are more "command"-based, i.e., those replete with "thou shalt's" and "thou shalt not's," and against adherents of religions that eschew such absolutes. Similarly, the "inflexibility" requirement treats adherents of the same religion differently depending on the strictness with which they interpret the teachings of their faith. Absent reversal, moreover, that requirement will govern further proceedings in the district court in this case and, indeed, in all other cases in the Tenth Circuit.

1. The Tenth Circuit's "inflexibility" holding is fairly included in the question presented. As framed by the EEOC's petition, the question asks, in relevant part, "[w]hether an employer can be liable under the religious-accommodation provision of Title VII for refusing to hire an applicant ... based on a 'religious observance and practice' only if the employer has actual knowledge that a religious accommodation was *required*." Petition at i. Obviously, if the religious belief at issue is a "flexible" one, that is, not mandatory on the believer, an accommodation will not be "required" for the employee to be in full compliance with the demands of his or her religion. This Court, therefore, can and should address and reject the Tenth Circuit's "inflexibility" holding.

2. For three reasons, the majority's "inflexibility" requirement merits reversal.

First, the Tenth Circuit's approach contravenes this Court's teaching that forcing courts to choose which beliefs are "central" or mandatory on the one hand, and which are "peripheral" or "flexible" on the other, "cannot be squared with the Constitution or with our precedents, and...would cast the Judiciary in a role that we were never intended to play." *Lyng* v. *Nw. Indian Cemetery Protective Ass'n*, 485 U.S. 439, 458 (1988). Thus, "[i]t is not within the judicial ken to question the centrality of particular beliefs or practices to a faith." *Hernandez* v. *Commissioner*, 490 U.S. 680, 699 (1989). Accord *Employment Division* v. *Smith*, 494 U.S. 872, 886-887 (1990) ("Repeatedly and in many different contexts, we have warned that courts must not presume to determine the place of a particular belief in a religion").

Indeed, as the Second Circuit put it in *Ford* v. *McGinnis*, *supra,* "To confine the protection of the First Amendment to only those religious practices that are mandatory would necessarily lead us down the unnavigable road of attempting to resolve intra-faith disputes over religious law and doctrine." 352 F.3d at 593. That too is a powerful reason to reject the Tenth Circuit's "inflexibility" rule.

Second, the majority's "inflexibility" rule is contrary to Title VII's plain language. By its terms Title VII requires accommodation, where it can be done without undue burden, of "*all aspects* of religious observance and practice," not just "observances and practices" that may be considered mandatory. 42 U.S.C. § 2000e(j) (emphasis added). In other words, a religious "observance" or "practice" falls squarely

within the accommodation requirement even if it is merely recommended, encouraged or even motivated by one's religious beliefs. To deny protection to such observances and practices is to eliminate much of the protection Title VII was intended to provide, and that its text explicitly provides.

Other circuits have avoided this mistake. In applying the statute, they have merely required that the claimant have a religious belief that creates a conflict with employment duties and is either "bona fide," *Antoine* v. *First Student, Inc.*, 713 F.3d 824, 831 (5th Cir. 2013); *Peterson* v. *Hewlett-Packard Co.*, 358 F.3d 599, 606 (9th Cir. 2004); *Morrissette-Brown* v. *Mobile Informary Med. Ctr.*, 506 F.3d 1317, 1321 (11th Cir. 2007), or "sincere"—and nothing more. *Webb* v. *City of Philadelphia*, 562 F.3d 256, 259 (3rd Cir. 2009); *Tepper* v. *Potter*, 505 F.3d 508, 514 (6th Cir. 2007); *Adeyeye* v. *Heartland Sweeteners, LLC*, 721 F.3d 444, 448 (7th Cir. 2013); *Harrell* v. *Donahue*, 638 F.3d 975, 979 (8th Cir. 2011). Given the history and language of Title VII, that is the correct approach.

In another statutory setting, the Seventh Circuit explicitly rejected the logic of the Tenth Circuit's inflexible religious practice test when it noted in the context of a claim under the Religious Land Use and Institutionalized Persons Act ("RLUIPA") that "a religious believer who does more than he is strictly required to do is nevertheless exercising his religion." *Grayson* v. *Schuler*, 666 F.3d 450, 454 (7th Cir. 2012). As an illustration, the court noted that a "Catholic who vows to obey the Rule of St. Benedict and therefore avoid 'the meat of four-footed animals' is per-

forming a religious observance even though not a mandatory one." *Id.*[9] The D.C., Second and Eighth Circuits have similarly rejected an "inflexibility" or "mandatory" requirement as to claims directly under the Free Exercise Clause. See *Levitan* v. *Ashcroft*, 281 F.3d 1313, 1319 (D.C. Cir. 2002) (holding that a "requirement that a religious practice be mandatory to warrant First Amendment protection finds no support in the cases of the Supreme Court or this court"); *Ford* v. *McGinnis*, 352 F.3d 582, 593 (2nd Cir. 2003) (same); *United States* v. *Means*, 858 F.2d 404, 407 (8th Cir. 1988) (test for religious burden is whether plaintiffs have been compelled to "refrain from religiously *motivated* conduct or to engage in conduct that they find objectionable for religious reasons.") (emphasis added).

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[9] Congress has specified that RLUIPA and the Religious Freedom Restoration Act on which it is based apply to "any exercise of religion, whether or not compelled by, or central to, a system of religious belief." 42 U.S.C. § 2000cc-5(7)(A). That formulation shows that Congress itself views the plain meaning of "exercise of religion" as including religious beliefs that are neither central to nor compelled by any particular "system of religious belief." Given the broad and similar language of Title VII, there is no reason to believe Congress understood the term "religion" as defined there any differently. See also *Korte* v. *Sebelius*, 735 F.3d 654, 683 (7th Cir. 2013) (noting that "the substantial-burden inquiry does not invite the court to determine the centrality of the religious practice to the adherent's faith; RFRA is explicit about that"); *Nelson* v. *Miller*, 570 F.3d 868, 878 (7th Cir. 2009) (noting under RLUIPA that "requiring a prisoner to show that his preferred diet is compelled by his religion [is] unlawful"); *Adkins* v. *Kaspar*, 393 F.3d 559, 570 (5th Cir. 2004) ("no test for the presence of a 'substantial burden' in the RLUIPA context may require that the religious exercise that is claimed to be burdened be central to the adherent's religious belief system").

Third, as with the panel majority's heightened *scienter* requirements, the majority's "inflexibility" holding would seriously undermine Congress's purpose of ensuring "equality of employment opportunities" even for believers who choose to adhere to the tenets of their religions. *Pullman-Standard, supra,* 456 U.S. at 276. As previously explained, the majority's approach obviously creates an inequality among religious believers, depending upon the degree to which their various religions place more or less emphasis on fixed commands or prohibitions.

Equally important, the majority's approach places believers who wish to show their religious faith and devotion by adhering to their religions' "recommendations," as well as their commands, at a clear disadvantage compared with non-believers who lack such beliefs. Under the Tenth Circuit's ruling, an employer has every right to fire an employee, or to refuse to hire an applicant, if the employee chooses to adhere to a "flexible" religious precept that has *any* impact—even an impact short of an undue burden—on the employer's business.

That too seriously undercuts Congress's purpose of "assuring equality of employment opportunities" regardless of religious belief or practice. *Pullman-Standard, supra,* 456 U.S. at 276. And it is yet another powerful reason to overturn the Tenth Circuit's "inflexibility" holding.

CONCLUSION

The Tenth Circuit's "inflexibility" holding and heightened *scienter* requirements all contravene the plain language of the Title VII religious accommodation provision, even as they substantially undermine Congress's purpose of ensuring that employees and job applicants are not disadvantaged unnecessarily when they choose to adhere to their religious beliefs. The decision below should be reversed.

Respectfully submitted.

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APPENDIX

APPENDIX

Interests and Descriptions of Particular *Amici Curiae*

The General Conference of Seventh-day Adventists is the highest administrative level of the Seventh-day Adventist church and represents more than 76,000 congregations with more than 18 million members worldwide. In the United States, the North American Division of the General Conference oversees the work of more than 5,400 congregations with more than 1.1 million members. Observance of the Sabbath is a central tenet of the Seventh-day Adventist church. The Adventist church has a strong interest in seeing that its members and all individuals of faith are protected from workplace discrimination.

The American Islamic Congress (AIC) serves both Muslims and Non-Muslims through the promotion of civil and human rights, including religious freedom. Its programs have reached tens of thousands of people in 40 U.S. states and across the globe. AIC recognizes that American Muslims have prospered under this country's tradition of religious tolerance, and that American Muslims must champion and protect such tolerance for people of all faiths.

KARAMAH: Muslim Women Lawyers for Human Rights is a nonprofit organization committed to promoting human rights globally, especially gender equity, religious freedom and civil rights in the United States. It pursues its mission through education, legal outreach and advocacy.

Bend the Arc: A Jewish Partnership for Justice is the nation's leading progressive Jewish voice empowering Jewish Americans to be advocates for the nation's most vulnerable. Bend the Arc mobilizes Jewish Americans beyond religious and institutional

boundaries to create justice and opportunity for all, through bold leadership development, innovative civic engagement, and robust progressive society.

The Sikh Coalition is the largest community-based Sikh civil rights organization in the United States. Founded on September 11, 2001, the Sikh Coalition works to defend civil rights and liberties for all people, empower the Sikh community, create an environment where Sikhs can lead a dignified life unhindered by bias or discrimination, and to educate the broader community about Sikhism in order to promote cultural understanding and diversity. The Sikh Coalition has successfully litigated cases on behalf of Sikh Americans who wear visible articles of faith, including turbans and unshorn hair (and beards), and have been denied employment or fired because of uniform or grooming policies and/or employers' claims of "lack of notice." Unlike some faiths where only the clergy are in uniform, all Sikhs are required to wear external articles of faith such as a steel bracelet (kara), uncut hair and beard (kesh), a comb (kangha) to care for their hair, and a turban (dastaar) to cover their hair. Globally and in the U.S., these articles of faith distinguish members of the Sikh religion and make them instantly recognizable, similar to a person's race or sex. Through our years of work on behalf of the Sikh community, we have found that qualified Sikh applicants are at a severe disadvantage during the hiring process, unaware or uninformed of dress code or grooming policies, and frequently victimized by an employer's willful failure to engage in an interactive religious accommodation process.

The National Association of Evangelicals is the largest network of evangelical churches, denomina-

tions, colleges and independent ministries in the United States. It believes that religious freedom is God-given, and that the government does not create such freedom but is charged to protect it. It is grateful for the American legal tradition of safeguarding religious freedom, and believes that this jurisprudential heritage should be carefully maintained.

The Christian Legal Society (CLS) is an association of Christian attorneys, law students, and law professors, with student chapters at approximately 90 public and private law schools. CLS believes that pluralism, which is essential to a free society, prospers only when the religious liberty of all Americans is protected, regardless of the current popularity of their particular religious beliefs and conduct. Religious individuals' ability to pursue their livelihoods without forfeiting their religious beliefs and conduct, and without being discriminated against based on those religious beliefs and conduct, lies at the heart of religious liberty.

Interfaith Alliance Foundation is a nonprofit organization that celebrates religious freedom by championing individual rights, promoting policies that protect both religion and democracy, and uniting diverse voices to challenge extremism. Founded in 1994, the Alliance's members across the country belong to 75 different faith traditions as well as no faith tradition. The Alliance has a long history of working to ensure that religious freedom and civil rights are respected in workplaces across the country.

The Baptist Joint Committee for Religious Liberty (BJC) is a 75 year-old education and advocacy organization that serves fifteen cooperating Baptist conventions and conferences in the United States, with sup-

porting congregations throughout the nation. BJC deals exclusively with religious liberty and church-state separation issues and believes that vigorous protection of no establishment and free exercise principles is essential to religious liberty for all Americans.

The Church of God in Christ is the fifth largest Protestant religious denomination and the largest African American church in the United States, with churches in 63 countries worldwide and an estimated membership of nearly 6.5 million members. The Church seeks to protect the religious freedoms of its members and all Americans.

Rev. Gradye Parsons, Stated Clerk of the General Assembly of the Presbyterian Church (U.S.A) is the senior ecclesiastical officer of the Presbyterian Church (U.S.A.). The PCUSA is a national Christian denomination with nearly 1,760,000 members in just under 10,000 congregations, organized into 171 presbyteries under the jurisdiction of 16 synods. Through its antecedent religious bodies, it has existed as an organized religious denomination within the current boundaries of the United States since 1706. Although the General Assembly does not claim to speak for all Presbyterians, it is the highest legislative and interpretive body of the denomination, and the final point of decision in all disputes. Religious liberty and protection from workplace discrimination are foundational in our policies.

The Orthodox Church in America was established in the Aleutian Islands and Alaska in the 1790s as a missionary initiative of the Russian Orthodox Church. Today the Church is the religious home of thousands of Orthodox Christians worshiping in tem-

ples across the country, and was granted independence from the Russian Church in 1970. The Orthodox Church in America rejoices in the strong value of religious freedom which is one of the hallmarks of American democracy, and it is committed to the effort to ensure full enjoyment of First Amendment religious rights in the workplace.

The Ethics & Religious Liberty Commission (ERLC) is the moral concerns and public policy entity of the Southern Baptist Convention (SBC), the nation's largest Protestant denomination, with over 46,000 autonomous churches and nearly 15.8 million members. The ERLC is charged by the SBC with addressing public policy affecting such issues as religious freedom, freedom of speech, sanctity of human life, family, and ethics. Southern Baptists believe they are under divine obligation to live out the requirements of their faith in all aspects of life, including in their employment. We support the ability of members of other faith groups to be able to do so as well.

The American Civil Liberties Union (ACLU) is a nationwide, non-profit, non-partisan organization with more than 500,000 members dedicated to defending the principles of liberty and equality embodied in the Constitution and the nation's civil rights laws. The ACLU of Oklahoma is a state affiliate of the national ACLU. For nearly a century, the ACLU has been at the forefront of efforts to combat discrimination and to safeguard the fundamental right to religious freedom.

The National Employment Lawyers Association (NELA) is the largest professional membership organization in the country comprised of lawyers who

represent workers in labor, employment and civil rights disputes. Founded in 1985, NELA advances employee rights and serves lawyers who advocate for equality and justice in the American workplace. NELA and its 69 circuit, state, and local affiliates have a membership of over 4,000 attorneys who are committed to working on behalf of those who have been illegally treated in the workplace. NELA's members litigate daily in every circuit, affording NELA a unique perspective on how the principles announced by the courts in employment cases actually play out on the ground. NELA strives to protect the rights of its members' clients, and regularly supports precedent-setting litigation affecting the rights of individuals in the workplace.